

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 31ST MAY 2007 / 10TH JYAISHTA 1929

WP(C).No. 10192 of 2004(L)

OS.149/2002 of SUB COURT, NEYYATTINKARA

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PETITIONER:

PALANIAPPAN, S/O. RAMASWAMY,
PADMA HOUSE, WARD NO.8, PALLICHAL VILLAGE,
NEYYATTINKARA TALUK, THIRUVANANTHAPURAM DIST.

BY ADV. SRI.P.KESAVAN NAIR

RESPONDENTS:

1. RAMESH, S/O. RAMACHANDRA REDDIAR,
PROPRIETOR, ATHIRA CABLE VISION, P.G.R. COMPOUND,
THAMARAKKULAM WARD, KOLLAM VILLAGE.

2. AMBILI, W/O. RAMESH OF -DO- -DO-.

BY ADV. SRI.JOHNSON GOMEZ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31/05/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX(WPC 10192/04)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF AGREEMENT DATED 25.5.2001.

EXT.P2: TRUE COPY OF THE ORDER IN O.S.149/02 DATED 23.1.2004 OF THE SUB
JUDGE'S COURT, NEYYATTINKARA.

PIUS C. KURIAKOSE,J.

W.P.(C) No.10192 of 2004

Dated: 31st May, 2007

JUDGMENT

The issue which arises for consideration is whether Ext.P2 order of the learned Subordinate Judge construing Ext.P1 as a bond for purpose of stamp duty is correct.

2. I have heard the submissions of Mr.P.Kesavan Nair, counsel for the petitioner and Johnson Gomez, counsel for the respondent.

3. The issue in my view is covered by the judgment of this court including the one in **Mathai Mathew v. Thampi** (1989(1) KLT 138). The main test for determining the character of a document as bond is whether a liability is created by the document or whether the document is executed in recognition of a pre-existing liability. On reading through Ext.P1 I feel that the document which is expressly described as an agreement is executed in recognition of a pre-existing liability. Even if two views are possible, courts are expected to lean in favour of the assessee as held by this court in **Mathai Mathew v. Thampi** (supra). The result is that Ext.P2 is set aside and the learned Subordinate Judge is directed to mark the original of Ext.P1 as an agreement and proceed with the trial in accordance with law.

The Writ Petition is allowed as above. No costs.

srd

PIUS C.KURIAKOSE, JUDGE

W.P.C.No.

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